



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

street; it is both a grading and the erection of an elevated structure for the passage of railroad trains. But even if it be treated as a grading the judgment is inconsistent with an earlier decision that the raising of a street grade for the exclusive use of a railroad is within the principle of the *Story* case, *supra*. *Reining v. N. Y. & W. R. R.*, 128 N. Y. 157. Upon the point that the erection of the viaduct is the act of an agent of the state for which the defendant cannot be held liable the decision is squarely in conflict with an earlier decision by the same court upon substantially the same facts. *Lewis v. N. Y. & H. R. R.*, 162 N. Y. 202. But assuming the soundness of the present position as to liability for the erection of the viaduct, there remains the injury to the plaintiff's easements by the operation of the defendant's trains upon the structure and for that injury the doctrine of the *Story* case provides a recovery. The suggestion, of the court that the statute is unconstitutional if obedience thereto involves a trespass, violates the established rule of construction that regulations of public corporations requiring the taking by them of private property do not imply a taking without compensation. *Gardner v. Trustees of Newburgh*, 2 Johns. Ch. (N. Y.) 162. The decision under discussion leaves the law of New York in a curious condition. The state may authorize steam railroad companies to run trains through the public streets without compensation to abutters not owning the fee. *Fobes v. R. & O. R. R.*, 121 N. Y. 505. Once established there, according to the principal case, they may be authorized to run their trains upon elevated structures without compensation. Thus, indirectly, may be reached a result that under the doctrine of the *Story* case amounts to a violation of the constitutional provision against the taking of property without compensation.

LIABILITY OF A VENDOR FOR NEGLIGENCE IN THE SALE OR CONSTRUCTION OF A CHATTEL. — Does the negligence of a vendor in selling a defective chattel render him liable to other than his immediate vendee? A recent Rhode Island decision has added another jurisdiction to those answering this question in the negative. *McCaffrey v. Mossberg, etc., Mfg. Co.*, 50 Atl. Rep. 651. The plaintiff, an employee of a manufacturing jeweller, was injured by the breaking of a drop press negligently constructed by the defendant, and sold by him to the jeweller. Recovery was denied on the ground that no duty of care was owed by the defendant to the plaintiff.

The authorities almost unanimously accord, the decisive arguments being an absence of duty to the plaintiff, a break in the chain of legal causation, and the multiplicity of suits thought likely to result if the action were allowed. *Curtin v. Somerset*, 140 Pa. St. 70; *Bragdon v. Perkins-Campbell Co.*, 87 Fed. Rep. 109. But *cf. Glenn v. Winters*, 40 N. Y. Supp. 659. On the other side, it is argued that the natural consequence of putting a defective article on the market is injury to whoever uses that article, and that under modern conditions such person is generally not the first vendee but his servant or sub-vendee, to whom a duty of care is consequently owed; that the rule of "natural and probable consequences" should determine the class of persons who may claim reparation, as well as the kind of physical damage for which compensation may be obtained. See 16 L. QUART. REV. 168. This argument finds support chiefly in certain analogous classes of cases where

such a duty of care, quite apart from the contract, is recognized as existing towards strangers to the contract. It is admitted to exist when the article sold is "imminently dangerous," such as poisonous drugs, though the rule is not always confined to such goods. *Thomas v. Winchester*, 6 N. Y. 397; see *Bright v. Record Co.*, 88 Wis. 299. So also in implied invitation cases. *Heaven v. Pender*, L. R. 11 Q. B. 503. When under a traffic agreement one railroad company negligently furnished another a defective car by which a servant of the latter was injured, recovery was allowed on the ground that the defendant railroad must have foreseen that the car would be operated by employees, and consequently owed them the duty of care. *Pa. R. R. Co. v. Snyder*, 55 Oh. St. 342; *Teal v. American Mining Co.*, 87 N. W. Rep. 837 (Minn.); *cf. Caledonian Ry. Co. v. Mulholland*, [1898] A. C. 216. The same reasoning seems equally applicable to the principal case. But courts have refused to apply this doctrine to the sale of machinery. *Heizer v. Mfg. Co.*, 110 Mo. 605. The vendor, however, is held liable if he knows of the defect in the article; and in a few instances he has been so held on the ground of negligent misrepresentation where he failed to know of the defect through carelessness. *Lewis v. Terry*, 111 Cal. 39; *Blood Balm Co. v. Cooper*, 83 Ga. 457; *cf. George v. Skivington*, L. R. 5 Ex. 1.

These several classes of transactions in which the defendant's liability, apart from contract, is admitted, seem to point to a general principle, large enough to include the principal case, namely that one who puts articles on the market owes the duty of care to all those persons who ought reasonably to have been foreseen as likely to use them. See *Bishop v. Weber*, 139 Mass. 411. The tendency of modern decisions is certainly to extend liability for negligence in this direction. The extension suggested would be the logical consequence of those already made.

The cases which rest liability upon misrepresentation suggest the question how far an actual reliance upon the defendant's misrepresentation is necessary to the plaintiff's suit. If the action is treated strictly as an action for misrepresentation actual reliance is essential. But under such interpretation the rule of *Blood Balm Co. v. Cooper*, *supra*, would be of narrow application. A servant using his master's machine doubtless assumes that some one has taken care to have it suitable for the intended purpose, but he certainly does not consciously rely on an implied representation to that effect by the maker. The cases lay little stress on this element of actual reliance. Nor does it appear why such reliance should be of more importance here than where the liability is rested upon an implied "invitation" or the "imminently dangerous" nature of the goods.

THE PROTECTION OF INTERESTS ACQUIRED UNDER AN OVERRULED DECISION. — It is axiomatic that the courts, applying the principle of *stare decisis*, will not overrule a line of decisions, or even a single decision which has been acted upon as a rule of property, except for the strongest reasons. But what is the effect when such a decision is overruled? It has been held by the Supreme Court in applying state law, that they will not follow a state decision overruling a line of decisions, in reliance on which the parties to the suit have made commercial contracts. *Gelpcke v. Dubuque*, 1 Wall. 175. This is perhaps due to the fact that the court's jurisdiction is for the protection of citizens of other states. See 4 HARV.